its operation were confined solely to those engaged in interstate commerce. The remaining three members of the majority declined to commit themselves on this subject. For a discussion of the principles involved in this last point, see 20 HARV. L. REV. 481.

LANDLORD AND TENANT — COVENANTS IN LEASES — WHETHER COVENANT INDIRECTLY AFFECTING VALUE RUNS WITH LAND. — A lease from A to B contained a proviso for reëntry in case of breach of B's covenant to repair. In making a sublease of part of the premises to C, B covenanted that he would repair the part of the premises retained. The defendant, B's assignee, failed to repair; whereupon A reëntered and ejected the plaintiff, C's assignee. *Held*, that B's covenant to C did not run with the land sublet so as to give C's assignee a right of action. *Dewar* v. *Goodman*, 24 T. L. R. 62 (Eng., Ct. App., Nov. 8, 1907).

This decision affirms that of the lower court, for a discussion of which see 20 HARV. L. REV. 577.

LANDLORD AND TENANT — RENT — DISTRESS ON STRANGER'S GOODS ON PREMISES. — The plaintiff was an underlessee of rooms on the defendant's premises, in which he conducted an art club where exhibitions were held for the sale of members' paintings, the plaintiff retaining a commission. These exhibitions were open only to persons invited or introduced by members. A distress was levied on the premises by the defendants for rent due from the immediate lessee, and certain of the pictures in the art club were seized. *Held*, that the pictures are subject to the distress. *Challoner* v. *Robinson*, 42 L. J. 527 (Eng., Ch. D., July 30, 1907). Appeal dismissed, [1908] 1 Ch. 49.

As a general rule at common law, since the landlord is supposed to give credit to a visible stock on the premises, whatever chattels are found there, whether they belong to the tenant or not, may be distrained on. *Gorton* v. *Faulkner*, 4 T. R. 565; *Lyons* v. *Elliott*, 1 Q. B. D. 210. But there is an exception in favor of trade. *Connah* v. *Hale*, 23 Wend. (N. Y.) 461; *Simpson* v. *Hartopp*, Willes, 512. The principle seems to be that, where the tenant in the course of a public trade is necessarily put in possession of the goods of others, such goods, although on the demised premises, are not liable to distress for rent. However, the trade must be public; that is, a trade which is in general open to the public, though not necessarily one which is classified as a public calling. See *Muspratt* v. *Gregory*, 1 M. & W. 633, 652; 3 *ibid.* 677. Clearly, then, the present decision is sound. The plaintiff's trade was not a public trade in any sense. And the privilege, when granted, is not primarily for the trader; the law, in consideration of the benefit which the community derives from the carrying on of the trade, protects the goods. See *Muspratt* v. *Gregory*, *supra*, 645, 646.

LEGACIES AND DEVISES — LAPSED BEQUESTS AND DEVISES — SET-OFF OF DEBT OF ORIGINAL LEGATEE AGAINST LEGATEE SUBSTITUTED BY STATUTE. — A statute provided that if a legatee died before his testator the legacy should not lapse, but should go to the legatee's heir "in the same way it would have gone to the legatee had he survived." *Held*, that the legacy falling to the heir of a deceased legatee is subject to debts owed the testator by the deceased legatee. *Tilton* v. *Tilton*, 82 N. E. 704 (Mass.).

An executor may set off debts owed the testator against a legatee, since the debts are assets, the retention of which by the legatee would be inequitable. *Howland* v. *Hecksher*, 3 Sandf. Ch. (N. Y.) 519, 525. A similar set-off may be made against the legatee's assignee, since the latter stands in the shoes of his assignor. *Estate of Casper Dull*, 137 Pa. St. 116. But in the present case the primary legatee never had any interest whatever in the estate. *Matter of Hafner*, 45 N. Y. App. Div. 549. On his predeceasing the testator, his heir takes under the testator's will, to the exclusion of the legatee's husband, wife, or personal representatives. *Jones* v. *Jones*, 37 Ala. 646. If the testator in his lifetime had erased the name of one legatee and substituted another, it is clear that the legacy would not be subject to the debts of the first legatee. The statute operates in a similar way, substituting a new legatee for one who cannot

take, in order to prevent a lapsed legacy. The weight of authority in similar devise cases is that the substituted heir takes free. *Powers* v. *Morrison*, 88 Tex. 133. The statute should have the same effect in the case of a legacy. *Carson* v. *Carson's Executor*, 1 Met. (Ky.) 300.

MUNICIPAL CORPORATIONS — ACTIONS BY MUNICIPAL CORPORATIONS — ESTOPPEL BY LACHES. — The plaintiff company maintained uninterrupted and exclusive use of streets in an unused portion of the city for over forty years, and had invested large sums which would be lost if the street should be reopened. *Held*, that the city is equitably estopped from claiming that the plaintiff's structures constituted an obstruction of the street. *City of Chicago* v. *Illinois Steel Co.*, 82 N. E. 286 (Ill.).

No estoppel arises when both parties are equally well informed. *Attkisron* v. *Plum*, 50 W. Va. 104. In the principal case, therefore, what is actually laches and adverse possession is treated as an estoppel because of the fancied injustice in ousting one who has knowingly occupied and improved municipal property. The better doctrine is that one who encroaches on the public domain without affirmative justification does so at his peril. *Barter* v. *Commonwealth*, 3 Pa. 253; *Lawrenceburg* v. *Wesler*, 10 Ind. App. 153. But decisions similar to the present case are frequent. *N. Y., N. H. & H. R. R.* v. *New Haven*, 46 Conn. 257. Such cases seem but a logical conclusion from the doctrine that municipal corporations are not exempt, as is the state, from the operation of the statute of limitations and its equitable counterpart, laches. *Boone County* v. *Burl., etc., R. R.*, 139 U. S. 684. But this discrimination against the rights of smaller sections of the public seems unjustifiable. *Cf.* 20 HARV. L. REV. 644. The courts, however, should no more support a municipality in unconscionable proceedings than an individual; so, where justice requires it, a public right may be lost by estoppel. But in the present case the city made no representations on which the plaintiff could rely, and hence the basis of true estoppel is lacking.

MUNICIPAL CORPORATIONS — ASSESSMENTS FOR LOCAL IMPROVEMENTS — ASSESSMENT OF RAILROAD RIGHT OF WAY. — Under statutory provision a city council ordered a sidewalk to be constructed, and assessed the abutting property owners, including a railroad corporation holding an abutting right of way. The corporation objected that its property was not benefited by the improvement. *Held*, that the assessment by the city council is conclusive as to what property is benefited. *Northern Pac. R. R. Co.* v. *City of Seattle*, 91 Pac. 244 (Wash.).

Whether or not a railroad right of way is subject to special assessment is a disputed question. See 2 ELIOTT, RAILROADS, § 786. The power to assess is usually granted by statutes which authorize the municipality to declare what property is benefited by an improvement and to assess accordingly. The basis of this taxation is benefit to the particular property assessed, aside from the general benefit to the community. It is obviously difficult to find sufficient benefit to a railroad right of way by most improvements of adjoining streets to justify a special assessment. But such improvements as the establishment of contiguous drainage are clearly of benefit to a right of way. *Louisville, etc., R. R. Co.* v. *State*, 122 Ind. 443. And an assessment has been held constitutional where there was only a possibility of future benefit to the right of way. *Louisville & Nashville R. R. Co.* v. *Barber Asphalt Paving Co.*, 197 U. S. 430. The courts will properly go to great lengths in supporting a legislative finding of benefit. But to preclude the courts from any review of the legislative determination would open the door to arbitrary and unreasonable confiscation of property by a municipality, and on this ground the decision in the present case cannot be supported. See *Allegheny City* v. *West Pa. R. Co.*, 138 Pa. St. 375; 2 DILL., MUN. CORP., § 761.

PARTNERSHIP — RIGHTS AND REMEDIES OF CREDITORS — OSTENSIBLE PARTNERSHIP. — A carried on business under the firm name of A & B. B was an infant. A separate creditor of A attached assets of the ostensible firm,